IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 28670 of 2007(K)

O.P (M.V).NO.228/2004 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA.

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PETITIONER:

PAULOSE, AGED 37 YEARS,
S/O.YOYAKI VARGHESE, KUTTICHIRA HOUSE,
KADACKANADU KARA, MAZHUVANNOOR KARA,
KARIMKUNNAM VILLAGE, THODUPUZHA.

BY ADV. SRI.PEEYUS A.KOTTAM.

RESPONDENTS:

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1. **RINU MATHEW, S/O.MATHEW,**
   VADAKKEPARAMBIL HOUSE,
   NELLAPARA, KARIMKUNNAM KARA, KARIMKUNNAM VILLAGE,
   THODUPUZHA.

2. **N.ETHIRAJ, S/O.NARARAJAN,**
   10, SOLAI STREET, OZAVARKARAI,
   PONDICHERY DISTRICT, PIN 605 001.

3. **THE NEW INDIA ASSURANCE CO.LTD.,**
   MADAPARAMBIL CHAMBERS, M.C.ROAD,
   MUVATTUPUZHA.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No. 28670 OF 2007

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Dated this the 27th day of September 2007

JUDGMENT

This writ petition is filed to set aside Exts.P3 and P4. The petitioner is the claimant in O.P.(MV)No.228 of 2004 of the Motor Accidents Claims Tribunal, Muvattupuzha. The 2nd respondent in the O.P. is the owner of the vehicle involved in the accident. The address of the 2nd respondent is shown as the address that is available from Ext.P5 insurance policy issued by the insurance company. Attempts have been made to serve notice on that address which had not fructified. The court below is of the strong opinion that it is not the correct address and therefore the petitioner should find out the correct address to serve notice on him. A motor accidents victim approaches the Tribunal for indulgence and the court has to consider his claim sympathetically. How can a poor claimant who is involved in an accident succeed in finding out what will be the correct address of the person especially when he is out of State. I am informed that the insurance company does not dispute about the existence of a valid policy in the case. But the liability of the insurance company is only to indemnify the owner

and unless there is an owner on the proper party array the Tribunal may not be justified in directing the insurance company to indemnify the owner. With the available address, the party had taken notice and at last he had resorted to the procedure as envisaged under Order 5 Rule 20 C.P.C., I find that interest of justice mandates that permission should be granted to take out substituted service to the 2nd respondent in one of the leading Dailies and it is seen from the petition that the prayer is to do it in the Indian Express.

Therefore I set aside the order passed by the Tribunal directing it to review the order passed by it against the 2nd respondent and permit the petitioner to effect service by resorting to substituted service by paper publication as envisaged under Order 5 Rule 20 C.P.C.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-